

Mark D. Parker  
Parker, Heitz & Cosgrove, PLLC  
401 N. 31st St., Suite 805  
P.O. Box 7212  
Billings, MT 59103-7212  
Phone: (406) 245-9991  
Facsimile: (406) 245-0971  
Email: [markdparker@parker-law.com](mailto:markdparker@parker-law.com)

FILED

4/20/2021

Clerk, U.S. District Court  
District of Montana  
Billings Division

*Attorneys for National Board of Medical Examiners*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION**

TESSA ZOLNIKOV,

Plaintiff,

vs.

NATIONAL BOARD OF MEDICAL  
EXAMINERS,

Defendant.

CV-22-35-BLG-SPW-TJC

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, the National Board of Medical Examiners (“NBME”) files this Notice of Removal to remove the action titled *Tessa Zolnikov v. National Board of Medical Examiners*, Docket No. DV-20-100, from the Montana Fourteenth Judicial District Court, Musselshell County, to the United States District Court for the District of Montana, Billings Division. This Court has original jurisdiction under 28 U.S.C. § 1331, because Plaintiff’s

Complaint asserts claims under the Rehabilitation Act and the Americans with Disabilities Act, both of which are federal statutes.

In support of this Notice of Removal, NBME respectfully states as follows:

**A. Background**

1. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and orders served upon NBME in the state court action are attached hereto at **Exhibit A**.

2. In her State Court Complaint, Plaintiff states that she is a medical student at the University of Washington School of Medicine. Ex. A, Complaint ¶ 2. She alleges that she is required to take and pass three tests administered by NBME as part of her medical school requirements. *Id.* ¶ 6. Plaintiff requested testing accommodations from NBME, including extra testing time, on two tests (“Step 1” and “Step 2”) based on an assertion that she has generalized anxiety disorder and post-traumatic stress disorder. *Id.* ¶¶ 8-9, 22. NBME denied Plaintiff’s requests. *Id.* ¶¶ 16, 25.

3. Plaintiff passed both the Step 1 and Step 2 tests without testing accommodations. *Id.* ¶¶ 19, 25. Nevertheless, Plaintiff claims to have suffered damage based on NBME’s denial of her requests, and she seeks compensatory and punitive damages in her complaint. *Id.* ¶¶ 26, 32, 36.

4. In removing this action, NBME denies that it has violated any laws.

**B. Federal Question Jurisdiction**

5. Plaintiff asserts two claims in her Complaint: (1) “Count I - Violation of the Rehabilitation Act” and (2) “Count II - Violation of the Americans with Disabilities Act.”

6. Plaintiff’s first claim is raised under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. Her second claim is raised under the Americans with Disabilities Act, 42 U.S.C. § 12189.

7. Plaintiff’s claims arise under federal law. This Court, therefore, has original jurisdiction over Plaintiff’s action pursuant to 28 U.S.C. § 1331. Removal to this Court is proper under 28 U.S.C. § 1441(a).

**C. Timeliness of Removal and Non-Waiver of Defenses**

8. This action was originally filed by Plaintiff on December 3, 2020, in the Montana Fourteenth Judicial District Court, Musselshell County, and assigned docket number DV-20-100.

9. Removal of this action is timely. NBME received and was served with a copy of the Complaint and Summons on March 24, 2022. This Notice of Removal is being filed within 30 days after receipt of the Complaint by NBME and within 30 days after service of the summons on NBME. *See* 28 U.S.C. § 1446(b)(1).

10. By removing this action to this Court, NBME does not waive and expressly reserves all defenses available to it.

**D. Propriety of Removal to This Court**

11. The Montana Fourteenth Judicial District Court, Musselshell County, is located within the District of Montana, Billings Division. Pursuant to 28 U.S.C. § 1441(a), this action is properly removed to this Court.

**E. Notice to State Court and Plaintiff**

12. Pursuant to 28 U.S.C. § 1446(d) and Local Rule 3.3, NBME will promptly (and within seven days) file a copy of this Notice of Removal with the Montana Fourteenth Judicial District Court, Musselshell County. NBME will also promptly provide Plaintiff with written notice of the filing of this Notice of Removal.

**CONCLUSION**

For the foregoing reasons, NBME respectfully removes this action to the United States District Court for the District of Montana, Billings Division, and respectfully requests that no further proceedings be held in this action in the Montana Fourteenth Judicial District Court, Musselshell County.

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DATED this 20<sup>th</sup> day of April, 2022.

/s/ Mark D. Parker

Mark D. Parker

*Attorneys for National Board of  
Medical Examiners*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Notice of Removal was served on the following recipient on this 20<sup>th</sup> day of April, 2022 by placing a true and correct copy of same in the U.S. mail, postage prepaid:

Robert Farris-Olsen  
Morrison Sherwood Wilson Deola, PLLP  
401 N. Last Chance Gulch  
Helena, MT 59601

Attorney for Petitioner Tessa Zolnikov

/s/ Mark D. Parker